IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

WEDNESDAY, THE 14TH MARCH 2007 / 23RD PHALGUNA 1928

Crl.L.P..No. 148 of 2007()

CC.740/2003 of J.M.F.C.-I,ATTINGAL

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PETITIONER/COMPLAINANT:

M.R. SUDHA, W/O.MANIKANTAN,
P.S.N.MANDIR, KACHERI JUNCTION, ATTINGAL.

BY ADV. SRI.T.D.ROBIN

RESPONDENTS: ACCUSED & STATE:

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1. K.M. MURUGAN, KOYIND SILVER PALACE,
PALACE ROAD, ATTINGAL.

2. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

R1-BY ADV. SRI.M.R.RAJESH
SMT.A.K.PREETHA
SMT.BINDHYA JOSE
R2- BY P.P.SRI.THOMAS JOHN AMBOOKKAN

THIS CRIMINAL LEAVE PETITION HAVING COME UP FOR ADMISSION ON ON 14/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. THANKAPPAN, J.

CRL.L.P.NO.148 OF 2007

Dated this the 14th day of March, 2007.

O R D E R

This is an application for special leave to appeal against the judgment in C.C.No.740/2003 on the file of the Judicial Magistrate of First Class-I, Attingal. It is alleged in the complaint that the 1st respondent had issued a cheque in favour of the petitioner/complainant for an amount of Rs.80,000/= and when the cheque was presented for encashment, the same was dishonoured on the ground of insufficiency of fund with the account of the 1st respondent. On complying the statutory provisions regarding notice etc., and since the 1st respondent had not paid the amount covered by the cheque, the complaint filed before the court alleging that the 1st respondent had committed the offence punishable under Section 138 of the N.I.Act. To prove the case against the 1st respondent, one witness was examined and Exts.P1 to P6 were produced. After closing the evidence of the petitioner/complainant, the 1st respondent was questioned under Section 313 of the Code of Criminal Procedure.

Denying the allegations in the complaint, the 1st respondent had stated that the cheque in question was not given for the discharge of any legally enforcible liability towards the complainant, whereas, the same was given as a security when a chitty had been bid by the 1st respondent. Further the 1st respondent had stated that he had paid the entire chitty amount and requested the petitioner/complainant, who was the partner of the chit to return the cheque, which he had issued as security for the payment of the chitty amount. However, the same cheque was being misused by the complainant. To prove this case, the 1st respondent himself was examined as DW1 and relied on Exts.D1 to D6. Considering the entire evidence, the trial court found that the complainant/petitioner failed to prove the transaction between himself and the 1st respondent which led to the issuance of the cheque in question. The trial court also found that the 1st respondent had discharged his burden proving that the cheque in question was not issued in connection with any of the transactions narrated in the complaint. Hence, the 1st respondent was acquitted. Against the acquittal order, this petition is filed.

2. Heard the learned counsel appearing fort the petitioner/complainant and perused the judgment of the trial court. The trial court had considered the case elaborately and found that the evidence adduced by the petitioner/complainant is not enough to prove that the 1st respondent had committed any offence punishable under Section 138 of the N.I.Act. Further, the trial court found that the presumption available under Sections 139 and 138 of the N.I.Act has been rebutted by the 1st respondent by adducing the evidence. Hence, the judgment of the trial court does not require any interference by this Court. Accordingly, the special leave to appeal stands dismissed.

K. THANKAPPAN, JUDGE.

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